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COMPETITION IN THE SPORTS PROGRAMMING MARKETPLACE

before the

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Good morning Mr. Chairman, Ranking Member Stearns, and members of the Subcommittee. My name is Glenn Britt, and I am President and CEO of Time Warner Cable. Time Warner Cable is the nation's second largest cable operator and the fourth largest multiple video programming distributor, serving approximately 13.3 million subscribers in 33 states. I want to thank you for inviting me to appear here today to share Time Warner Cable's perspective on sports programming and the video marketplace.

America's love affair with sports is well documented. Sporting events are undeniably an important element of American culture – a shared bonding experience for families, communities, and, in an Olympic year such as 2008, the entire nation. And it is because of sports' undeniable appeal that Time Warner Cable offers its subscribers a wide variety of sports-related programming, from the many high school sporting events that we feature on free, local video-on-demand channels to the carriage of a host of channels devoted in whole or in part to all manner of professional and amateur sports.

Sports television, which is nearly as old as television itself, has evolved over the years. The development of cable television has provided new outlets for sports teams and their fans to enjoy live events and related programming. These new outlets have generally been positive – offering viewers opportunities to watch sporting events that previously might not have been available on free, over-the-air broadcast television.

In the past few years, however, a new trend has developed: the movement of telecasts of live sporting events from broadcast and broadly-themed cable sports channels to league and team-specific channels. The leagues and teams have developed this strategy in order to maximize their financial returns. This is perfectly appropriate; it is the goal of all business to do well for their stakeholders. And Congress has wisely determined not to expand the role played by government in such matters, but rather to rely on the dictates of a vibrant marketplace to produce the best results for the viewing public.

Lately, however, there have been new and contradictory calls for more government intervention in the programming marketplace. On the one hand, some have called on the government to require distributors to offer all channels on an *a la carte* basis. Conversely, others, especially some sports leagues and teams that have started their own programming services, have called on the government to require distributors to carry some (but not all) of their programming services on broadly distributed tiers. The best answer, though, is not to pick winners and losers – either between sports programmers and distributors or, more importantly, between sports fans and those non-fans who would be forced to subsidize that programming.

Any governmentally-mandated "one size fits all" approach – whether it calls for mandatory *a la carte* or for forced basic tier carriage – would ignore the fact that determinations regarding what programming services to carry and on how to price and market them involve complex editorial and business judgments that are best made without government intrusion. For example, as a number of independent studies have consistently shown, mandatory *a la carte* would result in consumers paying higher prices with less choice. While there may be limited situations in which *a la carte* carriage of a particular channel makes sense, that decision involves multiple factors – including the cost, breadth of appeal and nature of the programming in question – that should be left to the discretion of the party with the most direct relationship with the consumer.

The same factors – and not government mandates – should determine whether a channel is offered on a broadly-distributed basic tier or on a less widely distributed basis. The NFL in particular is being especially disingenuous in appealing to the government to compel distributors to carry one of their services – the NFL Network – on broadly-distributed tiers while simultaneously defending its right to limit distribution of its more appealing service – the NFL Sunday Ticket Package – to a single distributor, DirecTV.

For its part, Time Warner Cable's goal in providing sports and other programming to our customers is to offer the best possible mix of programming at the best possible prices. In doing this, we try, among other things, to balance the needs and interests of our entire subscriber base – sports fans and non-sports fans alike. One way we have sought to achieve this objective is by taking advantage of the flexibility offered by digital technology to create separate sports-oriented packages containing single-sport networks such as NBA TV, the Tennis Channel, and other sports-themed channels that are expensive or feature programming with limited local appeal to the subscribers in a particular area. By congregating these relatively high-cost channels with specialized appeal on a separate tier, we are able to hold down the cost of service for the rest of our subscribers.

Providing customers with a diverse mix of desirable programming with the best possible pricing and packaging is not merely an objective for Time Warner Cable and other cable operators, it is a competitive necessity. More than four years ago, the Federal Communications Commission concluded that "the vast majority of Americans enjoy more choice, more programming and more services than at any time in history." Since that time, of course, the marketplace has become even more intensely competitive, with the continued growth of DirecTV and Dish Network – now the second and third largest multichannel video providers in the country – as well as the entry into the market of well-financed telephone companies and the increasing use of the Internet and other new platforms to distribute video.

The simple truth is that unless we offer customers the services that they want at a fair price, they can and will take their business elsewhere. Indeed, despite our best efforts, Time Warner Cable, like other major cable companies, continues to lose basic subscribers. The cable industry as a whole lost 500,000 basic subscribers in 2007 and Time Warner Cable alone lost over 130,000 basic subscribers during just the last six months of the year.

This means that, more than ever, Time Warner Cable has to offer customers the best possible programming options in terms of both carriage and packaging. Indeed, as the facts above make clear, if we based our carriage-related decisions on other factors, such as whether we had an ownership interest in a particular service, rather than on our assessment of what mix of programming and prices best meets our customers' needs, we would be severely disciplined in the marketplace.

This is the case with respect to sports programming as well as to all the other programming that we carry. In fact, Time Warner Cable has very few investments in services featuring major league sporting events. What we have done – and are proud of – is invest considerable resources in the creation of locally-originated channels that provide the type of community-oriented news and information programming not found elsewhere. Sports programming makes up only a very small portion of the content of most of these channels. Even where we have created a local sports-themed service, the featured sporting events are, for the most part, of very local interest, including high school, collegiate, and minor league professional sports.

None of Time Warner Cable's locally-produced channels, whether sports-themed or not, are "regional sports networks" as that term is commonly understood in the industry. Nevertheless, taking advantage of an overly-broad definition of an "RSN" adopted by the FCC in its order approving our Adelphia transaction, MASN, a regional sports channel that features coverage of the Washington Nationals and Baltimore Orioles baseball teams, has invoked a provision in that order allowing it to bring an arbitration claim against us. Citing Time Warner's Cable's creation and operation of a news and information channel whose programming is infrequently preempted by professional basketball games, MASN's complaint alleges that Time Warner Cable has engaged in wrongful discrimination by declining to provide it with analog carriage on our systems in North Carolina – systems that are located hundreds of miles away from the home markets of the teams featured on MASN. Although the FCC has wisely suspended this part of the Adelphia order and has barred future arbitration claims like this from going forward, this particular proceeding was grandfathered.

The facts of this case illustrate how Time Warner Cable seeks to put the interests of its customers first in its programming decisions, not that it can or does engage in any sort of improper discrimination. For that reason we are confident that we will ultimately prevail in the case on the merits. But it should never have gotten to this point. While the marketplace may seem "messy" at times, our experience has been that, in the long run, carriage agreements can be and are worked out to the mutual satisfaction of the parties without the government getting involved in the process. Indeed, the MASN case demonstrates that government intervention in this area not only is unnecessary, but also that such intervention can encourage some parties to make baseless claims. Defending against such claims is costly and time-consuming. Moreover, since all litigation creates uncertainty, this type of ill-advised regulation can end up saddling consumers with higher costs and worse programming choices than would be the case if the government left carriage decisions to be resolved by the best regulator of such matters – the marketplace.

In conclusion, although many television viewers feel passionately about sports and sports programming, Congress has wisely decided generally to leave program carriage decisions to the marketplace. It is that marketplace that will best assure that both sports fans and non-fans alike are offered the best possible programming options. Moreover, the government should be especially wary of calls for it to intervene made by parties who seek such intervention as a means of advancing their business objectives – but who oppose regulation when it would apply to them. Finally, to the extent that government does choose to intervene, it must be sure to apply the same rules to all parties. Regulations that favor some competitors over others serve only to deprive consumers of the full benefits of the vibrant competition that exists today in the video marketplace.